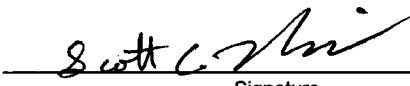
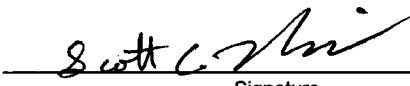
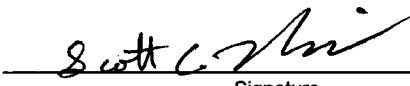


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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 41794.0074									
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/506,856	Filed 2 September 2004									
	First Named Inventor John D. Bambara										
	Art Unit 1771	Examiner Victor S. Chang									
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table border="0"><tr><td><input type="checkbox"/> applicant/inventor.</td><td> Signature</td></tr><tr><td><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td>Scott C. Nielson Typed or printed name</td></tr><tr><td><input checked="" type="checkbox"/> attorney or agent of record. Registration number 50,755</td><td>(801) 799-5858 Telephone number</td></tr><tr><td><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td>4 March 2008 Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.	 Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Scott C. Nielson Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number 50,755	(801) 799-5858 Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	4 March 2008 Date
<input type="checkbox"/> applicant/inventor.	 Signature										
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Scott C. Nielson Typed or printed name										
<input checked="" type="checkbox"/> attorney or agent of record. Registration number 50,755	(801) 799-5858 Telephone number										
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	4 March 2008 Date										

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO..... 10/506,856
FILING DATE..... 2 September 2004
INVENTORS..... John D. Bambara
ASSIGNEE Collect Plastics LLC
EXAMINER Victor S. Chang
ART UNIT..... 1771
ATTORNEY'S DOCKET NO. 41794.0074
TITLE "Polypropylene Foam and Foam Core Structure"

APPLICANT'S REMARKS THAT ACCOMPANY THE PRE-APPEAL BRIEF
REQUEST FOR REVIEW

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

From: Scott C. Nielson
HOLLAND & HART LLP
Customer Number: 57600

Applicants respectfully request that the Patent Office review this patent application prior to filing an appeal brief. Each basis for review is explained in detail under separate headings as outlined below.

Claim Rejections – 35 U.S.C. § 112 ¶2

On pages 2 to 3 of the Office Action, independent claim 1 and dependent claims 3, 7, 10, 12-15, 18, 95, and 96 were rejected under 35 U.S.C. § 112 for “being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections.” Specifically, the Patent Office objects to claim 1 because “it is unclear where is the bonding polymer in the skin layer.”

The legal standards for evaluating a claim under 35 U.S.C. § 112 ¶ 2 are well-settled. The Federal Circuit has explained that “[t]he requirement that the claims ‘particularly point[] out and distinctly claim[]’ the invention is met when a person experienced in the field of the invention would understand the scope of the subject matter that is patented when the claim is read in conjunction with the rest of the specification. ‘If the claims when read in light of the specification reasonably apprise those skilled in the art of the scope of the invention, § 112 demands no more.’” S3 Inc. v. Nvidia Corp., 259 F.3d 1364, 1367, 59 USPQ2d 1745, 1747 (Fed. Cir. 2001) (quoting Miles Labs., Inc. v. Shandon, 997 F.2d 870, 875, 27 USPQ2d 1123,

1126 (Fed. Cir. 1993). The inquiry of whether a person experienced in the field would understand the scope of the subject matter being claimed should focus on whether the claims adequately provide warning to others of what constitutes infringement of the claims. Solomon v. Kimberly-Clark Corp., 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000).

The MPEP further explains that “breadth of a claim is not to be equated with indefiniteness.” (MPEP § 2173.04.) The MPEP continues: “if the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph.”

Applicants respectfully submit that the Patent Office is improperly equating the breadth of claim 1 with indefiniteness, which is expressly forbidden as explained in MPEP § 2173.04. Applicants are not required to specify in claim 1 exactly where the bonding polymer is in the skin layer.

Applicants also submit that claim 1 sufficiently interrelates the elements recited therein to reasonably apprise those skilled in the art of the scope of the subject matter being claimed. For example, claim 1 recites a “multilayer polymeric structure” including a “foamed core” and a “first polymeric skin layer coextruded with and joined to a surface of the foamed core,” wherein the “first polymeric skin layer comprises a bonding polymer.” The cooperative relationship between the “foamed core” and the “first polymeric skin layer” is that the “first polymeric skin layer” is “coextruded with and joined to a surface of the foamed core.” The cooperative relationship between the “first polymeric skin layer” and the “bonding polymer” is that the “first polymeric skin layer” includes the “bonding polymer.” There is no ambiguity regarding the cooperative relationship between the elements.

Claims 97-104

Applicants hereby authorize the Examiner to cancel claims 97-104 by Examiner’s amendment should this patent application be otherwise allowable. The other claims that are currently withdrawn should be rejoined because they are dependent from an allowed independent claim.

The Commissioner is hereby authorized to charge any additional fees which may be required for this application, or credit any overpayment, to Deposit Account No. 08-2623. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension and authorize payment of any such extension fees to Deposit Account No. 08-2623.

Respectfully submitted,

Date 4 March 2008

By /Scott C. Nielson/

Scott C. Nielson
Registration No. 50,755